

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Bryant Barton, #214582,)	
)	CIVIL ACTION NO. 9:07-3471-RBH-BM
Plaintiff,)	
)	
v.)	
)	REPORT AND RECOMMENDATION
Michael Truesdale, SCDC Staff Attorney;)	
)	
)	
Defendant.)	
_____)	

This action has been filed by the Plaintiff, pro se, pursuant to 42 U.S.C. § 1983. Plaintiff, who was an inmate at the Evans Correctional Institution at the time this action was filed, alleges violations of his constitutional rights by the named Defendant.

On September 29, 2008, an Order was mailed to Plaintiff advising him to file a response to the Defendant's motion for summary within ten days, and further warning the Plaintiff that, if he failed to respond, this case would be dismissed for failure to prosecute. However, Plaintiff's copy of the Order was returned to the Clerk of Court on October 6, 2008, with the envelope being marked "RTS" [Return to Sender] and "Inmate released".

The Court notes that when Plaintiff filed this action, he was specifically instructed as follows:

You are ordered to always keep the Clerk of Court advised **in writing**...if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this order, you fail to file something you are required to file within a deadline set by a District Judge or a Magistrate Judge, **your case may be dismissed for violating this order**. Therefore, if you have a change of address before this case has ended, you must comply with this order by immediately advising the Clerk of Court in writing of such change of address....**Your failure to do so will not**

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P-1

be excused by the Court. (emphasis added)

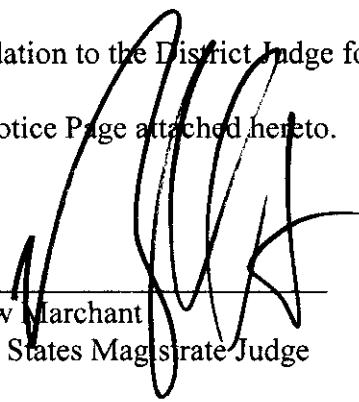
See Order filed November 20, 2007.

Plaintiff was aware of this Order, and in fact had previously filed a change of address notice when he was transferred to a different Institution. see Court Docket No. 16. However, Plaintiff has now failed to comply with this order, and as a result neither the Court nor the Defendant has any means of contacting him concerning his case.

Based on the foregoing, Plaintiff's failure to respond to the pending motion for summary judgment, and the previous instructions and specific warning given to the Plaintiff in the Court's order of November 20, 2007, it is recommended that this action be **dismissed, with prejudice**, in accordance with Rule 41(b), Fed.R.Civ.P. The Clerk is directed to send this Report and Recommendation to Plaintiff at his last known address.

If the Plaintiff notifies the Court within the time set forth for filing objections to this Report and Recommendation that he wishes to continue with this case and provides a current address, the Clerk is directed to vacate this Report and Recommendation and return this file to the undersigned for further handling. If, however, no objections are filed, the Clerk shall forward this Report and Recommendation to the District Judge for disposition.

The parties are also referred to the Notice Page attached hereto.



Bristow Marchant
United States Magistrate Judge

Charleston, South Carolina

October 8, 2008

p2

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).

18
p3